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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,674	02/22/2002	Fermin Ruiz	PGI6044P0830US	2114

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WOOD, PHILLIPS, KATZ, CLARK & MORTIMER  
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EXAMINER

GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 07/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application N .

10/081,674

Applicant(s)

RUIZ ET AL.

Examiner

Jeffrey L. Gellner

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-20, and 22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hassenboehler et al. (US 6,030,906) in view of Vanier (US 6,061,954).

As to Claim 1, Hassenboehler et al. discloses a protective cover ("protective apparel" of col. 4 line 2) comprising a fibrous nonwoven fabric ("first layer" of col. 5 lines 5-8) formed from fibrous and/or filamentary elements ("fibrous material" of col. 5 lines 5-8) made of thermoplastic polymer (col. 5 line 7) with retarding properties ("barrier properties" of col. 4 line 60) with a portion exhibiting the ability to modify the ripening (defined as blocking heat loss at night which would quicken fruit ripening). Not disclosed is the cover sized to fit around an associated agricultural product. Vanier, however, discloses the use of a cover sized to fit around an associated agricultural product (1 of Fig. 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the cover of Hassenboehler et al. by using with an associated agricultural product as disclosed by Vanier so as because of the covers unique pore size, breathability, and barrier properties (see Hassenboehler et al. at col. 4 lines 54-63).

As to Claim 3, Hassenboehler et al. in view of Vanier further disclose a fabric with a basis weight of between 10-100 g/m sq (Hassenboehler et al. at col. 5 line 10; 1 oz/yard sq.).

Art Unit: 3643

As to Claim 4, Hassenboehler et al. in view of Vanier further disclose a staple length fiber (Hassenboehler et al. at col. 5 line 11 when the fiber is cellulose-based and natural as the first layer - see col. 5 lines 25-26).

As to Claim 5, Hassenboehler et al. in view of Vanier further disclose the fabric spunbound polymeric (Hassenboehler et al. at col. 5 line 8).

As to Claim 6, Hassenboehler et al. in view of Vanier further disclose the fabric being one piece and having an edge (Vanier at Fig. 3).

As to Claims 7 and 8, Hassenboehler et al. in view of Vanier further disclose a tie ("tie" of Vanier at Fig. 1) for affixing the cover to the product.

As to Claim 9, the limitations of Claim 1 are disclosed as described above. Not disclosed is the cover with a seam joining edges by sewing. Examiner takes official notice that it is old and notoriously well known in the horticultural arts to use covers with sewn seams to protect plants. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the cover of Hassenboehler et al. as modified by Vanier by adding a sewn seam as a means of changing size.

As to Claim 10, Hassenboehler et al. in view of Vanier further disclose a reinforcing scrim (defined as "cellulose-based natural staple fibers" of col. 5 line 11 of Hassenboehler et al.).

As to Claim 11, Hassenboehler et al. in view of Vanier further disclose a porous polymeric film layer ("third layer" of Hassenboehler et al. at col. 5 line 17).

As to Claim 12, Hassenboehler et al. in view of Vanier further disclose a UV-protective (inherent in any manmade thermoplastic).

Art Unit: 3643

As to Claim 13, Hassenboehler et al. in view of Vanier further disclose a melt-additive polymer (defined as “meltblown” of Hassenboehler et al. at col. 5 lines 18-19).

As to Claim 14, Hassenboehler et al. in view of Vanier further disclose a fiber surface treatment (defined as “other and additional like layers” of Hassenboehler et al. at col. 5 lines 25-26).

As to Claim 15, Hassenboehler et al. in view of Vanier further disclose a topical treatment (defined as “other and additional like layers” of Hassenboehler et al. at col. 5 lines 25-26).

As to Claim 16, Hassenboehler et al. discloses a protective cover (“protective apparel” of col. 4 line 2) comprising a fibrous nonwoven fabric (“first layer” of col. 5 lines 5-8) formed from fibrous and/or filamentary elements (“fibrous material” of col. 5 lines 5-8) with retarding properties (“barrier properties” of col. 4 line 60) and exhibiting the ability to modify the ripening (the cover would inherently block or alter some light wavelengths and, hence, alter light transmission). Not disclosed is the cover sized to fit around an associated agricultural product. Vanier, however, discloses the use of a cover sized to fit around an associated agricultural product (1 of Fig. 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the cover of Hassenboehler et al. by using with an associated agricultural product as disclosed by Vanier so as because of the covers unique pore size, breathability, and barrier properties (see Hassenboehler et al. at col. 4 lines 54-63). The cover of Hassenboehler et al. as modified by Vanier inherently perform the method steps recited in Claim 16.

As to Claim 17, Hassenboehler et al. discloses a protective cover (“protective apparel” of col. 4 line 2) comprising a fibrous nonwoven fabric (“first layer” of col. 5 lines 5-8) formed from

Art Unit: 3643

fibrous and/or filamentary elements (“fibrous material” of col. 5 lines 5-8) with retarding properties (“barrier properties” of col. 4 line 60). Not disclosed is the cover sized to fit around an associated agricultural product and exhibiting the ability to modify fruit ripening. Vanier, however, discloses the use of a cover sized to fit around an associated agricultural product (1 of Fig. 1) and exhibiting the ability to modify fruit ripening (perforations disclosed in Figs. 1 and 3; col. 5 lines 14-24) by venting. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the cover of Hassenboehler et al. by using with an associated agricultural product as disclosed by Vanier so as because of the covers unique pore size, breathability, and barrier properties (see Hassenboehler et al. at col. 4 lines 54-63). The cover of Hassenboehler et al. as modified by Vanier inherently perform the method steps recited in Claim 17.

As to Claim 18, Hassenboehler et al. discloses a protective cover (“protective apparel” of col. 4 line 2) comprising a fibrous nonwoven fabric (“first layer” of col. 5 lines 5-8) formed from fibrous and/or filamentary elements (“fibrous material” of col. 5 lines 5-8) with retarding properties (“barrier properties” of col. 4 line 60) and exhibiting the ability to modify the ripening (the cover would inherently block or alter some light wavelengths and, hence, alter light transmission). Not disclosed is the cover sized to fit around an associated agricultural product. Vanier, however, discloses the use of a cover sized to fit around an associated agricultural product (1 of Fig. 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the cover of Hassenboehler et al. by using with an associated agricultural product as disclosed by Vanier so as because of the covers unique pore size, breathability, and

Art Unit: 3643

barrier properties (see Hassenboehler et al. at col. 4 lines 54-63). The cover of Hassenboehler et al. as modified by Vanier inherently perform the method steps recited in Claim 18.

As to Claim 19, Hassenboehler et al. in view of Vanier further disclose a staple length fiber (Hassenboehler et al. at col. 5 line 11 when the fiber is cellulose-based and natural as the first layer - see col. 5 lines 25-26).

As to Claim 20, Hassenboehler et al. in view of Vanier further disclose hydroentangled staple length fibers (Hassenboehler et al. at col. 5 line 11 and col. 6 line 11).

As to Claim 22, Hassenboehler et al. in view of Vanier further disclose a substantially continuous filament (inherent in Hassenboehler et al.).

As to Claim 23, Hassenboehler et al. discloses a protective cover ("protective apparel" of col. 4 line 2) comprising a fibrous nonwoven fabric ("first layer" of col. 5 lines 5-8) formed from fibrous and/or filamentary elements ("fibrous material" of col. 5 lines 5-8) with retarding properties ("barrier properties" of col. 4 line 60). Not disclosed is the cover sized to fit around an associated agricultural product as a tube. Vanier, however, discloses the use of a cover sized to fit around an associated agricultural product (1 of Fig. 1) shape as a tube (Fig. 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the cover of Hassenboehler et al. by using with an associated agricultural product as disclosed by Vanier so as because of the covers unique pore size, breathability, and barrier properties (see Hassenboehler et al. at col. 4 lines 54-63). The cover of Hassenboehler et al. as modified by Vanier inherently perform the method steps recited in Claim 23.

As to Claim 24, the limitations of Claim 23 are disclosed as described above. Not disclosed is the cover with the edges sewn together. Examiner takes official notice that it is old



Art Unit: 3643

and notoriously well known in the horticultural arts to use covers with sewn edges to make the tube shape so as to protect plants. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the cover of Hassenboehler et al. as modified by Vanier by adding a sewing the edges so as to create a tube.

As to Claim 25, Hassenboehler et al. discloses a protective cover (“protective apparel” of col. 4 line 2) comprising a fibrous nonwoven fabric (“first layer” of col. 5 lines 5-8) formed from fibrous and/or filamentary elements (“fibrous material” of col. 5 lines 5-8) with retarding properties (“barrier properties” of col. 4 line 60). Not disclosed is the cover formed from a sheet, sized to fit around an associated agricultural product and exhibiting the ability to modify fruit ripening. Vanier, however, discloses the use of a cover formed from a sheet (Fig. 3), sized to fit around an associated agricultural product (1 of Fig. 1), and exhibiting the ability to modify fruit ripening (perforations disclosed in Figs. 1 and 3; col. 5 lines 14-24) by venting. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the cover of Hassenboehler et al. by using with an associated agricultural product as disclosed by Vanier so as because of the covers unique pore size, breathability, and barrier properties (see Hassenboehler et al. at col. 4 lines 54-63). The cover of Hassenboehler et al. as modified by Vanier inherently perform the method steps recited in Claim 25.

As to Claim 26, Hassenboehler et al. discloses a protective cover (“protective apparel” of col. 4 line 2) comprising a fibrous nonwoven fabric (“first layer” of col. 5 lines 5-8) formed from fibrous and/or filamentary elements (“fibrous material” of col. 5 lines 5-8) with retarding properties (“barrier properties” of col. 4 line 60). Not disclosed is the cover a tube, sized to fit around an associated agricultural product and exhibiting the ability to modify fruit ripening.

Art Unit: 3643

Vanier, however, discloses the use of a cover in the form of a tube (Fig. 1), sized to fit around an associated agricultural product (1 of Fig. 1), and exhibiting the ability to modify fruit ripening (perforations disclosed in Figs. 1 and 3; col. 5 lines 14-24) by venting. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the cover of Hassenboehler et al. by using with an associated agricultural product as disclosed by Vanier so as because of the covers unique pore size, breathability, and barrier properties (see Hassenboehler et al. at col. 4 lines 54-63). The cover of Hassenboehler et al. as modified by Vanier inherently perform the method steps recited in Claim 26.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hassenboehler et al. (US 6,030,906) in view of Vanier (US 6,061,954) in view of Kajander et al. (US 5,091,240).

As to Claim 21, the limitations of Claim 18 are disclosed as described above. Not disclosed is the fabric comprising adhesive-bonded fibrous material. Kajander et al., however, disclose the use of an adhesive in a fabric (abstract). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the cover of Hassenboehler et al. as modified by Vanier by using a adhesive as disclosed by Kajander et al. to bind fibers within a layer (see Kajander et al. at abstract).

### ***Response to Arguments***

Applicant's arguments filed 21 April 2003 have been fully considered but they are not persuasive. The Applicant's arguments are: (1) Hassenboehler et al.'s protective cover is specifically related to medical applications and one of ordinary skill in the art would not

Art Unit: 3643

contemplate use of its disclosure for formation of a protective cover for agricultural products, and, in fact, the characteristics touted by Hassenboehler et al. can for some applications be detrimental for the controlled ripening of agricultural products (Remarks page 3 last para. and page 4 top 2 lines); (2) the instant Application discloses the optional inclusion of apertures which would teach away from Hassenboehler et al. (Remarks page 4 1<sup>st</sup> complete para.); (3) Vanier contemplates a cover which is substantially uniform in composition and construction and does not teach a fibrous nonwoven fabric including a portion exhibiting the ability to modify the ripening of the associated agricultural product (Remarks page 4 last para. and page 5 1<sup>st</sup> para.); (4) no motivation in either reference to combine the references (Remarks page 5 1<sup>st</sup> complete para.); (5) Hassenboehler et al.'s "cellulose-based natural staple fibers" is not a "scrim" as understood by those skilled in the art (Remarks page 5 1<sup>st</sup> complete para.) (6) Hassenboehler et al. does not disclose a porous, polymeric film layer (Remarks page 6 top 3 lines); (7) Hassenboehler et al.'s "meltblown" layer does not disclose or suggest that the layer has protection-enhancing agents or the like (Remarks page 6 1<sup>st</sup> complete para.); (8) the reference of Hassenboehler et al. goes to "protective apparel" and Vanier goes to "plastic film" and neither goes to use with agricultural products (Remarks page 6 2<sup>nd</sup> complete para.); and, (9) Kajander et al. does not remedy the deficiencies of Hassenboehler et al. or Vanier (Remarks page 6 last two lines and page 7 top two lines).

As to argument (1), Examiner agrees that Hassenboehler et al. explicitly discloses the use of their cover for "protective apparel" with examples that are medical in nature. However, Hassenboehler et al. states that because of the covers properties it is "ideally suite[d] for a variety of end use applications such as protective apparel . . . ." (Hassenboehler et al. at col. 4 lines 61-

Art Unit: 3643

62). The medical uses are considered only possible uses and not considered limiting. Because the properties of the cover are, *inter alia*, elastic recovery, strength, breathability, and barrier properties Examiner considers the cover an obvious laminated nonwoven web to make into agricultural covers.

As to argument (2), the cover of Hassenboehler et al. is disclose as possessing “breathability” which would denote some type of apertures.

As to arguments (3) and (4), Examiner uses the Vanier reference to disclose that covers are used for agricultural products as Applicant notes at page 4 3<sup>rd</sup> complete para. As Applicant implies in the Remarks, Examiner considers it obvious to one of ordinary skill in the art to substitute, or use, the cover of Hassenboehler et al. for the use of Vanier. The properties of the cover of Hassenboehler et al., namely, elastic recovery, strength, breathability, and barrier, would make the cover ideal for covering agricultural products.

As to argument (5), scrim is defined: as a “durable plain-woven usu. cotton fabric” (Merriam-Webster’s Collegiate Dictionary at page 1050). Examiner considers the “cellulose-based natural staple fibers” of Hassenboehler et al. to fall within this definitions ambit.

As to argument (6), Examiner considers Hassenboehler et al.’s third layer which is a “nonelastomeric man-made fibrous material” to be a “porous polymeric film layer.”

As to Claim (7), Examiner considers “thermoplastic” to be UV-protective.

As to Claim (8), Examiner considers the combination of the references, Hassenboehler et al. and Vanier, to be proper because both go to solving a similar problem - covering and protecting a biological entity. Hassenboehler et al. is proper for the application disclosed in Vanier because of its properties described above.

Art Unit: 3643

As to Claim (9), Kajander et al. is used because of its disclosure of an adhesive in a fabric.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The fax phone numbers for the Technology Center where this application or proceeding is assigned are 703.305.7687, 703.305.3597, and 703.306.4195.

Art Unit: 3643

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.



Jeffrey L. Gellner

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